

Amendments to the Claims

This listing of claims will replace all prior versions and listings of claims in the present application.

1-40 (canceled)

41. (currently amended) A method of imparting pathogen resistance to plants, the method comprising:

providing a transgenic plant seed transformed with a transgene comprising a DNA molecule encoding a hypersensitive response elicitor polypeptide or protein from a bacterial plant pathogen and a promoter that is not pathogen-inducible, the promoter being operatively coupled to the DNA molecule encoding the hypersensitive response elicitor polypeptide or protein;

planting the transgenic plant seed in soil; and

propagating a plant from the planted seed, whereby expression of the hypersensitive response elicitor polypeptide or protein by the plant imparts systemic pathogen resistance to the plant.

42. (currently amended) The method according to claim 41, wherein the bacterial plant hypersensitive response elicitor polypeptide or protein is from a pathogen is selected from the group consisting of *Erwinia*, *Pseudomonas*, and *Xanthomonas*, *Phytophthora*, ~~and mixtures thereof.~~

43. (previously presented) The method according to claim 42, wherein the hypersensitive response elicitor polypeptide or protein is from *Erwinia chrysanthemi*.

44. (previously presented) The method according to claim 42, wherein the hypersensitive response elicitor polypeptide or protein is from *Erwinia amylovora*.

45. (previously presented) The method according to claim 42, wherein the hypersensitive response elicitor polypeptide or protein is from *Pseudomonas syringae*.

46. (previously presented) The method according to claim 42, wherein the hypersensitive response elicitor polypeptide or protein is from *Pseudomonas solanacearum*.

47. (previously presented) The method according to claim 42, wherein the hypersensitive response elicitor polypeptide or protein is from *Xanthomonas campestris*.

48. (canceled)

49. (previously presented) The method according to claim 41, wherein the plant is selected from the group consisting of dicots and monocots.

50. (previously presented) The method according to claim 49, wherein the plant is selected from the group consisting of rice, wheat, barley, rye, oats, cotton, sunflower, canola, peanut, corn, potato, sweet potato, bean, pea, chicory, lettuce, endive, cabbage, cauliflower, broccoli, turnip, radish, spinach, onion, garlic, eggplant, pepper, celery, carrot, squash, pumpkin, zucchini, cucumber, apple, pear, melon, strawberry, grape, raspberry, pineapple, soybean, tobacco, tomato, sorghum, and sugarcane.

51. (previously presented) The method according to claim 49, wherein the plant is selected from the group consisting of rose, *Saintpaulia*, petunia, *Pelargonium*, poinsettia, chrysanthemum, carnation, and zinnia.

52. (previously presented) The method according to claim 41, wherein the pathogen to which the plant is resistant is selected from the group consisting of viruses, bacteria, fungi, and combinations thereof.

53. (currently amended) The method according to claim 41 further comprising:

applying the hypersensitive response elicitor polypeptide or protein to the ~~propagated plants~~ plant to enhance the plant's pathogen resistance.

54-57 (canceled)

58. (original) A plant produced by the method of claim 41.

59. (currently amended) A transgenic plant seed from the plant produced by the method of claim 41, wherein the transgenic plant seed comprises the transgene.

60. (original) A plant propagule from the plant produced by the method of claim 41.

61. (currently amended) A method of imparting pathogen resistance to plants, the method comprising:

transforming a plant with a transgene comprising a DNA molecule encoding a hypersensitive response elicitor polypeptide or protein from a bacterial plant pathogen and a promoter that is not pathogen-inducible, the promoter being operatively coupled to the DNA molecule encoding the hypersensitive response elicitor polypeptide or protein, whereby said transforming provides for expression of the hypersensitive response elicitor polypeptide or protein that imparts systemic pathogen resistance to the ~~transgenic~~ plant.

62. (currently amended) The method according to claim 61, wherein the bacterial plant hypersensitive response elicitor polypeptide or protein is from a pathogen selected from the group consisting of *Erwinia*, *Pseudomonas*, and *Xanthomonas*, ~~*Phytophthora*, and mixtures thereof.~~

63. (previously presented) The method according to claim 62, wherein the hypersensitive response elicitor polypeptide or protein is from *Erwinia chrysanthemi*.

64. (previously presented) The method according to claim 62, wherein the hypersensitive response elicitor polypeptide or protein is from *Erwinia amylovora*.

65. (previously presented) The method according to claim 62, wherein the hypersensitive response elicitor polypeptide or protein is from *Pseudomonas syringae*.

66. (previously presented) The method according to claim 62, wherein the hypersensitive response elicitor polypeptide or protein is from *Pseudomonas solanacearum*.

67. (previously presented) The method according to claim 62, wherein the hypersensitive response elicitor polypeptide or protein is from *Xanthomonas campestris*.

68. (canceled)

69. (previously presented) The method according to claim 61, wherein the transgenic plant is selected from the group consisting of dicots and monocots.

70. (previously presented) The method according to claim 69, wherein the plant is selected from the group consisting of rice, wheat, barley, rye, oats, cotton, sunflower, canola, peanut, corn, potato, sweet potato, bean, pea, chicory, lettuce, endive, cabbage,

cauliflower, broccoli, turnip, radish, spinach, onion, garlic, eggplant, pepper, celery, carrot, squash, pumpkin, zucchini, cucumber, apple, pear, melon, strawberry, grape, raspberry, pineapple, soybean, tobacco, tomato, sorghum, and sugarcane.

71. (previously presented) The method according to claim 69, wherein the plant is selected from the group consisting of rose, Saintpaulia, petunia, Pelargonium, poinsettia, chrysanthemum, carnation, and zinnia.

72. (previously presented) The method according to claim 61, wherein the pathogen to which the transgenic plant is resistant is selected from the group consisting of viruses, bacteria, fungi, and combinations thereof.

73. (previously presented) The method according to claim 61, further comprising:

applying the hypersensitive response elicitor polypeptide or protein to the transgenic plant to enhance the plant's pathogen resistance.

74. (canceled)

75. (currently amended) A transgenic plant produced by a process comprising:

transforming a plant with a transgene comprising a DNA molecule encoding a hypersensitive response elicitor polypeptide or protein from a bacterial plant pathogen and a promoter that is not pathogen-inducible, the promoter being operatively coupled to the DNA molecule encoding the hypersensitive response elicitor polypeptide or protein, whereby said transforming provides for expression of the hypersensitive response elicitor polypeptide or protein to impart systemic pathogen resistance to the transgenic plant.

76. (currently amended) A transgenic plant seed obtained from the transgenic plant of claim 75, wherein the transgenic plant seed comprises the transgene.

77. (previously presented) A transgenic plant propagule obtained from the transgenic plant of claim 75.

78-79 (canceled)

80. (New) The method according to claim 41, wherein the DNA molecule comprises SEQ ID NO: 2, SEQ ID NO: 4, SEQ ID NO: 6, or SEQ ID NO: 8.

81. (New) The method according to claim 41, wherein the encoded hypersensitive response elicitor comprises the amino acid sequence of SEQ ID NO: 1, SEQ ID NO: 3, SEQ ID NO: 5, or SEQ ID NO: 7.

82. (New) The method according to claim 61, wherein the DNA molecule comprises SEQ ID NO: 2, SEQ ID NO: 4, SEQ ID NO: 6, or SEQ ID NO: 8.

83. (New) The method according to claim 61, wherein the encoded hypersensitive response elicitor comprises the amino acid sequence of SEQ ID NO: 1, SEQ ID NO: 3, SEQ ID NO: 5, or SEQ ID NO: 7.

84. (New) The transgenic plant according to claim 75, wherein the DNA molecule comprises SEQ ID NO: 2, SEQ ID NO: 4, SEQ ID NO: 6, or SEQ ID NO: 8.

85. (New) The transgenic plant according to claim 75, wherein the encoded hypersensitive response elicitor comprises the amino acid sequence of SEQ ID NO: 1, SEQ ID NO: 3, SEQ ID NO: 5, or SEQ ID NO: 7.